

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Worrell et. al.
Serial Number: 09/495,257
Filed: January 31, 2000
For: **Process for Producing Sanded Elastic Fabrics, and
Fabrics Made Therefrom**
Group Art Unit: 1771
Examiner: Salvatore, Lynda

BRIEF ON APPEAL UNDER 37 CFR § 1.192

Mail Stop Appeal Brief-Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

The following appeal brief is submitted pursuant to the appeal filed on or about September 9, 2003 from the Final Action dated April 9, 2003.

REAL PARTY IN INTEREST

Milliken & Company, P.O. Box 1926, 920 Milliken Road, Spartanburg, South Carolina 29303 (Assignee).

RELATED APPEALS AND INTERFERENCES

No appeals or interferences are known of which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF THE CLAIMS

The claims in the application are 1- 21. Of these, claims 1-6 are withdrawn from consideration; 7-21 are pending; none are allowed; and 7-21 are rejected.

STATUS OF THE AMENDMENTS

No amendments to the Claims were made subsequent to final rejection. The claims on appeal as they presently stand are appended hereto.

SUMMARY OF THE INVENTION

The invention is directed to sanded elastic fabrics having low levels of hairiness, and consistent nap density and height across the width of the fabric, and a process for making such fabrics. The production of sanded elastic fabric (i.e. fabrics containing elastic fibers) has historically been problematic, and it has been difficult to impossible to achieve fabrics with a consistent nap across their width and which do not have a high amount of fuzz on the fabric surface. (Background, p. 1-3.) The process of the invention utilizes a microfinishing film designed for non-textile applications to sand the elastic fabrics, thereby obtaining sanded elastic fabrics with low levels of hairiness (measured by a hairiness value of less than about 0.1 across the fabric width when measured with a Zweigle T690 Hairiness Tester.)

ISSUES

1. Whether Claims 8-21 are properly rejected under 35 USC 112, second paragraph as being indefinite.
2. Whether Claims 7-9, 11, 12, and 14-19 are properly rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,547,733 to Rock et al.

3. Whether Claims 8 and 21 are properly rejected under 35 U.S.C. 102(b)/103(a) as being unpatentable over U.S. Patent No. 5,547,733 to Rock et al.
4. Whether Claims 10, 13, 15 and 20 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,547,733 in view of U.S. T962,002 to Moore.

GROUPING OF CLAIMS

Claims 7 stands alone, and Claims 8-18 and 20-21 stand or fall together, and claim 19 stands alone, all separately from each other.

ARGUMENT

1. Whether Claims 8-21 are properly rejected under 35 USC 112, second paragraph as being indefinite.

Claims 8 and 19 were rejected under 35 USC 112, second paragraph, as being indefinite, and Claims 9-21 were rejected based on their dependency on claim 8. Specifically, the Examiner objected to the terminology "a hairiness value when measured with a Zweigle T690 Hairiness tester", finding it indefinite "for the lack of recitation to the chemical and structural features that produce the claimed hairiness value."

As described in the specification, one aspect of the invention is the achievement of a *sanded elastic* fabric having a low level of hairiness. As stated previously, conventional sanding processes for textile fabrics have heretofore been unable to achieve sanded elastic fabrics which do not have a high amount of fuzz on the fabric surface. In contrast, sanded elastic fabrics of the instant invention have a low level of fuzz on the surface, which is quantified structurally through a low level of hairiness, which is a

measurable, reproducible test measurement. Therefore, this recitation clearly meets the requirements of 35 USC 112, second paragraph. ("Determining whether a claim is indefinite requires an analysis of 'whether one skilled in the art would understand the bounds of the claim when read in light of the specification... If the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, [section] 112 demands no more.' " *Credle v. Bond*, 30 USPQ 2d 1919 (Fed. Circ. 1994) citing *Miles Lab, Inc. v. Shandon Inc*, 997 F.2d 870 (Fed. Circ. 1993), cert denied, 114 S. Ct. 943 (1994).)

With respect to Claim 19, the Examiner stated that it was unclear what was meant by the term "bundles of loosened fibers." Applicants' respectfully traverse this rejection. As set forth on p. 4 Applicants' originally filed specification, sanding of the fabric in the manner of the invention functions to loosen the fibers in the yarn bundles without undesirably cutting them in the manner of conventional sandpaper. It is maintained that one of ordinary skill in the art would readily appreciate the meaning of yarn bundles of loosened fibers, which would be a yarn bundle which has had at least some of its fibers loosened (e.g. such as by pulling them outwardly to some extent from the bundle), such as by processing it in the manner of the invention. Therefore, reconsideration and withdrawal of the rejections based on 35 USC 112 are respectfully required.

2. Whether Claims 7-9, 11, 12, and 14-19 are properly rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,547,733 to Rock et al.

Claims 7-9, 11, 12 and 14-19 were rejected under 35 USC 102(b) as being anticipated by Rock et al. Specifically, the Examiner stated that "Rock et al discloses a double knit composite fabric having an inner layer comprising a plurality of polyester fibers and an outer layer comprising a mixture of polyester and cotton fibers", and "teaches replacing the polyester of the inner layer with a stretching polyester such as Dupont's LYCRA (i.e., spandex) to give the fabric elasticity", and "to impart softness, Rock et al. teaches

sanding, brushing or napping the surface of the inner fabric to slightly raise the fabric.” In addition, with respect to Claim 7, the Examiner stated that “the method limitation of abrading the fibers with a microfinishing film is not given patentable weight at this time since it is not shown that the microfinishing film produces a substantially different abraded surface over the sanded, brushed or napped surface of the prior art.”

The Rock et al. patent is directed to a plaited double knit fabric. While Rock describes that the inner layer of his two layer fabric may be “sanded, brushed or napped”, there is no disclosure or suggestion of using a microfinishing film to treat the surface of the Rock fabric. In other words, Rock is practicing the prior art processes described in Applicants’ specification and illustrated in the drawings. As also described in the instant application and illustrated in the figures, *fabrics that are sanded in a conventional manner tend to have a high amount of fuzz on their surfaces, and therefore do not meet the hairiness levels described in the instant application.* Therefore, Applicant has in fact shown that the claimed fabrics are “substantially different” from those made by prior art processes. Therefore, it is respectfully requested that the rejections be withdrawn.

3. Whether Claims 8 and 21 are properly rejected under 35 U.S.C. 102(b)/103(a) as being unpatentable over U.S. Patent No. 5,547,733 to Rock et al.

Claims 10, 13, 15 and 20 were rejected under 35 USC 103(a) as being unpatentable over Rock as applied to Claim 8, in further view of Moore. Specifically, the Examiner acknowledged that Rock fails to disclose a Raschel warp knit fabric, but asserted that “Moore discloses a Raschel warp knit fabric comprising elastic and non-elastic filaments”, and that it “would have been obvious to one having ordinary skill in the art at the time the invention was made to make the elastic garment of Rock et al. using the Raschel warp knit structure taught by Moore since Raschel knitting machines are commonly used to knit elastic filament structures. “

Claims 10, 13, 15 and 20 are allowable for the reasons discussed above with respect to

Rock reference. Moore simply describes an unsanded Raschel warp knit structure, and likewise fails to disclose or suggest a sanded elastic fabric with low hairiness, or the sanding of an elastic fabric with a microfinishing film in the manner of the instant invention. Therefore, it is respectfully requested that the rejection be withdrawn.

4. Whether Claims 10, 13, 15 and 20 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,547,733 in view of U.S. T962,002 to Moore.

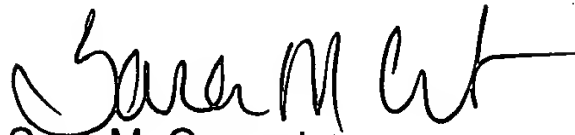
Claims 8 and 21 were rejected under 35 USC 102(b)/103(a) as being unpatentable over Rock et al. Specifically, the Examiner acknowledged that "the prior art of record does not explicitly teach the claimed hairiness value when measured with a Zweigle T690 Hairiness Tester of 0.07 or less", yet asserted that "it is reasonable to presume that the hairiness value is inherent to the Rock et al invention." The Examiner purported to provide support for this presumption through Rock's "use of the like materials (i.e. such as stretchable polyester) and the use of the like processes (i.e. such as abrading the surface by napping, brushing or sanding) which would result in the claimed property." In addition, the Examiner asserted that the "property of a hairiness value of less than .07 would obviously have been present once the Rock et al. product is provided."

Claims 8 and 21 are allowable over Rock et al for the reasons described above. Specifically, Rock teaches sanding in a conventional manner (like the prior art figures shown in Applicants' Figs. 1A, 1B and 1C) which would have high levels of hairiness, and fails to disclose or suggest a sanded elastic fabric having low hairiness as claimed, or even one that has been processed using a microfinishing film as set forth in the invention. In other words, since Rock uses a process shown by Applicants to achieve fabrics outside the scope of Applicants' claims, then it is not reasonable to presume that the Rock fabric would "inherently" or otherwise have the claimed level of low hairiness. Therefore, it is requested that the rejection be withdrawn.

Therefore, it is respectfully requested that the Examiner be reversed, Claims 7-21 be allowed and that the case be remanded for issuance.

December 9, 2003

Respectfully submitted,



Sara M. Current

Attorney for Applicant(s)

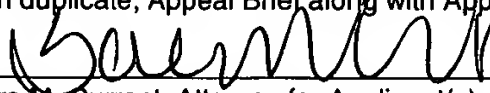
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop Appeal Brief- Patents, Commissioner for Patents, PO Box 1450/Alexandria, VA 22313-1450, on December 9, 2003, along with Request for Extension of Time in duplicate, Appeal Brief along with Appendix in triplicate, and a postcard receipt.



Sara M. Current, Attorney for Applicant(s)

Appendix of Claims Involved in th App al

1. (Withdrawn) A process for improving the hand of elastic fabrics comprising the steps of:
 contacting a surface of an elastic fabric with a microfinishing film to abrade the fibers on at least one surface of the fabric.
2. (Withdrawn) A process according to Claim 1, wherein said elastic fabric comprises an elastic knit fabric.
3. (Withdrawn) A process according to Claim 2, wherein said elastic fabric comprises a warp knit fabric.
4. (Withdrawn) A process according to Claim 1, wherein said step of contacting comprises contacting the surface of the elastic knit fabric with at least one roller having at least a portion of its surface covered with a microfinishing film.
5. (Withdrawn) A process according to Claim 1, wherein said step of contacting comprises contacting the surface of the elastic fabric with a microfinishing film having a grade of between about 10 and about 40 microns.
6. (Withdrawn) A process according to Claim 1, wherein said elastic fabric comprises spandex fibers.
7. (Previously amended) A fabric made according to the process for improving the hand of elastic fabrics comprising the steps of:
 contacting a surface of an elastic fabric with a microfinishing film to abrade the fibers on at least one surface of the fabric.
8. (Previously amended) A sanded elastic fabric having a hairiness value of less than

about 0.1 across its width when measured with a Zweigle T690 Hairiness Tester.

9. (Original) A sanded elastic fabric according to Claim 8, wherein said fabric comprises a knit elastic fabric.

10. (Original) A sanded elastic according to Claim 9, wherein said fabric comprises a warp knit fabric.

11. (Previously presented) A sanded elastic fabric according to Claim 9, wherein said fabric comprises a weft knit fabric.

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13. (Previously presented) A sanded elastic fabric according to Claim 10, wherein said fabric comprises a Raschel knit fabric.

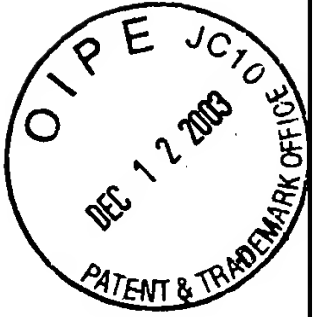
14. (Previously presented) A sanded elastic fabric according to Claim 8, wherein said fabric comprises spandex fibers.

15. (Previously presented) A sanded elastic fabric according to Claim 8, wherein said fabric comprises a blend of elastic and non-elastic fibers.

16. (Previously presented) A sanded elastic fabric according to Claim 8, wherein said fabric comprises non-elastic fibers selected from the group consisting of polyester, nylon and cotton fibers.

17. (Previously presented) A sanded elastic fabric according to Claim 8, wherein said fabric comprises about 5% to about 95% elastic fibers.

18. (Previously presented) A sanded elastic fabric according to Claim 17, wherein said fabric comprises about 20% to about 80% elastic fibers.
19. (Previously presented) A sanded elastic fabric according to Claim 8, wherein said fabric comprises yarn bundles of loosened fibers.
20. (Previously presented) A sanded elastic fabric according to Claim 8, wherein said fabric comprises a warp knit fabric having about 5% to about 95% elastic fibers.
21. (Previously presented) A sanded elastic fabric according to Claim 8, wherein said hairiness value is about 0.07 or less.

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As described in the specification, one aspect of the invention is the achievement of a *sanded elastic* fabric having a low level of hairiness. As stated previously, conventional sanding processes for textile fabrics have heretofore been unable to achieve sanded elastic fabrics which do not have a high amount of fuzz on the fabric surface. In contrast, sanded elastic fabrics of the instant invention have a low level of fuzz on the surface, which is quantified structurally through a low level of hairiness, which is a

measurable, reproducible test measurement. Therefore, this recitation clearly meets the requirements of 35 USC 112, second paragraph. ("Determining whether a claim is indefinite requires an analysis of 'whether one skilled in the art would understand the bounds of the claim when read in light of the specification... If the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, [section] 112 demands no more.' " *Credle v. Bond*, 30 USPQ 2d 1919 (Fed. Circ. 1994) citing *Miles Lab, Inc. v. Shandon Inc*, 997 F.2d 870 (Fed. Circ. 1993), cert denied, 114 S. Ct. 943 (1994).)

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The Rock et al. patent is directed to a plaited double knit fabric. While Rock describes that the inner layer of his two layer fabric may be “sanded, brushed or napped”, there is no disclosure or suggestion of using a microfinishing film to treat the surface of the Rock fabric. In other words, Rock is practicing the prior art processes described in Applicants’ specification and illustrated in the drawings. As also described in the instant application and illustrated in the figures, *fabrics that are sanded in a conventional manner tend to have a high amount of fuzz on their surfaces, and therefore do not meet the hairiness levels described in the instant application.* Therefore, Applicant has in fact shown that the claimed fabrics are “substantially different” from those made by prior art processes. Therefore, it is respectfully requested that the rejections be withdrawn.

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Claims 8 and 21 are allowable over Rock et al for the reasons described above. Specifically, Rock teaches sanding in a conventional manner (like the prior art figures shown in Applicants' Figs. 1A, 1B and 1C) which would have high levels of hairiness, and fails to disclose or suggest a sanded elastic fabric having low hairiness as claimed, or even one that has been processed using a microfinishing film as set forth in the invention. In other words, since Rock uses a process shown by Applicants to achieve fabrics outside the scope of Applicants' claims, then it is not reasonable to presume that the Rock fabric would "inherently" or otherwise have the claimed level of low hairiness. Therefore, it is requested that the rejection be withdrawn.

Therefore, it is respectfully requested that the Examiner be reversed, Claims 7-21 be allowed and that the case be remanded for issuance.

Respectfully submitted,

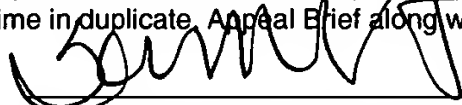
December 9, 2003



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CERTIFICATE OF MAILING

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Sara M. Current, Attorney for Applicant(s)

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3. (Withdrawn) A process according to Claim 2, wherein said elastic fabric comprises a warp knit fabric.
4. (Withdrawn) A process according to Claim 1, wherein said step of contacting comprises contacting the surface of the elastic knit fabric with at least one roller having at least a portion of its surface covered with a microfinishing film.
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about 0.1 across its width when measured with a Zweigle T690 Hairiness Tester.

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